

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
EASTERN DIVISION

Case No. 4:24-CV-00051-M

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| CYNTHIA B. AVENS, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | ORDER |
| |) | |
| FARIS C. DIXON, JR., District Attorney, |) | |
| PITT COUNTY MEMORIAL |) | |
| HOSPITAL, INC., |) | |
| DR. KAREN KELLY, Medical Examiner, |) | |
| JOHN/JANE DOE, and |) | |
| JOHN/JANE DOE, |) | |
| |) | |
| Defendants. |) | |
| |) | |

This matter comes before the court on the Plaintiff's Motion to Determine Validity and Applicability of 2016 Settlement Agreement.¹ DE 62. Pursuant to 28 U.S.C. § 636(b)(1) and Federal Rule of Civil Procedure 72(b), United States Magistrate Judge Robert T. Numbers II issued a Memorandum and Recommendation ("M&R"), recommending that the court deny Plaintiff's request without prejudice. DE 84. To date, no objections have been filed.²

A magistrate judge's recommendation carries no presumptive weight. The court "may accept, reject, or modify, in whole or in part, the . . . recommendation[] . . . receive further evidence or recommit the matter to the magistrate judge with instructions." 28 U.S.C. § 636(b)(1); *accord*

¹ The motion also seeks review of alleged conduct by "opposing counsel," which Judge Numbers has addressed and resolved in his January 9, 2025 order. *See* DE 84.

² Judge Jones issued the M&R on January 9, 2025, and ordered that the parties file any objections within fourteen (14) days after service, or on or before January 27, 2025. *See* 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72(b)(2); Local Civil Rule 72.4(b).

Mathews v. Weber, 423 U.S. 261, 271 (1976). The court “shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” *Id.* § 636(b)(1). Absent a specific and timely objection, the court reviews only for “clear error” and need not give any explanation for adopting the recommendation. *Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005).

Judge Numbers asserts that, “since none of the parties have [yet] relied on the settlement agreement as part of their claims or defenses, questions related to its validity, relevance, and effect are not properly before the court. Issuing an opinion on those matters at this time would constitute an impermissible advisory opinion. The district court should decline to do so.” DE 84 at 6. Upon careful review of the M&R and the record presented, and finding no clear error, the court ADOPTS the recommendation of the magistrate judge as its own. For the reasons stated therein, Plaintiff’s motion [DE 62] is DENIED WITHOUT PREJUDICE.

SO ORDERED this 3^d day of February, 2025.



RICHARD E. MYERS II
CHIEF UNITED STATES DISTRICT JUDGE